

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10228 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? no
2. To be referred to the Reporter or not? no
3. Whether Their Lordships wish to see the fair copy of the judgement? no
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? no
5. Whether it is to be circulated to the Civil Judge? No

USHABEN ALIAS SUDHA ALIAS KOKILA ALIAS GEETA

Versus

COMMISSIONER OF POLICE AHMEDABAD AND ANR

Appearance:

MR ANIL S DAVE for Petitioner

Mr.C.C.Bhalja, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/02/99

ORAL JUDGEMENT

1. The petitioner, through this writ petition under Article 226 of the Constitution of India, has challenged the detention order dated 6.6.1998 passed by the Commissioner of Police, Ahmedabad, under Section 3(2) of the Prevention of Anti-social Activity Act, (for short "PASA") and has prayed for his immediate release from illegal detention.

2. It appears from the grounds of detention contained in Annexure ; C to the writ petition that eight criminal cases were registered against the petitioner inter-alia under Section 381, 328 and 388 I.P.Code and also taking into consideration the statements of the two confidential witnesses the detaining Authority arrived at subjective satisfaction that the petitioner is a dangerous person and her activities are prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed which is under challenge in this writ petition on the sole ground that the activities of the petitioner are not prejudicial for maintenance of public order.

3. Registration of eight criminal cases against the petitioner under Section 381 and 388 I.P.Code may give rise to subjective satisfaction of the detaining Authority that the petitioner repeatedly committed these offences punishable under Chapter : XVII I.P.Code. As such she was rightly declared as dangerous person. Some assistance in this regard was rightly taken by the detaining Authority from the statements of two confidential witnesses.

4. However, a person who is declared as dangerous person within the meaning of Section 2(c) of the PASA can be preventively detained only when his or her activities are found to be prejudicial for maintenance of public order. The details of eight offences registered against the petitioner are not given nor it can be said that on these eight occasions the petitioner involved in activities which were prejudicial for maintenance of public order. She may be said to be thief, committing theft of gold ornaments, cash, tape-recorders, etc. but the activity of a thief, even though such activities are repeated frequently, cannot be said to be prejudicial for maintenance of public order. Learned A.G.P. has strenuously argued that in view of past incidents of the petitioner the detaining Authority thought it fit to take preventive measures so that the petitioner may not repeat in committing those offences. I am affraid this contention can be accepted. An order for preventive detention cannot be passed merely for preventing the criminal from commission of crime or offences. On the other hand, the purpose of preventive detention is to pass such order only when criminal or anti-social or nefarious activities are such which are likely to create situation prejudicial for maintenance for public order. Unless there is direct nexus between the criminal and anti-social activity and situation prejudicial for

maintenance for public order an order for preventive detention cannot be passed. In this view of the matter eight registered criminal cases do not furnish any material on which the detaining Authority could have reached subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

5. Now remains the statements of two confidential witnesses. I am conscious of the fact that this Court in exercise of jurisdiction under Article 226 of the Constitution of India can not substitute its finding whether the statements of the confidential witnesses are true or not, but for ascertaining whether the subjective satisfaction was based upon the material on record, this court can certainly see whether the material relied upon by the detaining Authority was actually a material which could be relied upon. If on the face value of the statements of the confidential witnesses it is found to be revolting to common sense it can be said that the detaining Authority did not entertain subjective satisfaction on proper application of mind to the statements of confidential witnesses.

6. The two statements of the confidential witnesses are revolting to common sense for the reasons that even habitual thief would not like to place the stolen sarees with a stranger rather she would take precaution that such stolen properties are kept with a person of her confidence. It does not flow from the statement of the second witness that he was a man of confidence of the petitioner. If the basic structure of the story set up by the second witness is found to be resting, on sandy foundation, additilnal structure raised on such sandy foundation is bound to collapse hence such story can be said to be revolting to common sense.

7. Similar is the statement of the first witness. A person whether he is a thief or is keeping stolen property with him or her will like to sell such property to a shop keeper or to a person of his or her confidence and not that he or she would be going and offering for sale in public such stolen articles. Moreover in the statements of the witness it is not disclosed what was the material on which the witness suspected the tape-recorder to be stolen. Such statement is apparently revolting to the common sense hence it could not be said to be material on which subjective satisfaction could be entertained by the detaining Authority.

8. In my opinion, on the face value of the

statements of these two witnesses it can be said that these were the incidents between two individuals in which some members of the public were involved and not that the peace or tranquility of the locality was disturbed or even tempo of the life of community was disturbed. Thus, these two incidents could not have furnished material to the detaining Authority for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. As such the impugned order becomes illegal, the consequence of which is that the writ petition succeeds and is allowed. The impugned order dated 6.6.1998 is hereby quashed. The petitioner shall be released forthwith unless she is wanted in some other case.

sd/-

Date : February 04, 1999 (D. C. Srivastava, J.)

sas